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No. 86-375

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

THE WHITE MOUNTAIN APACHE TRIBE, a body corporate established pursuant to the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476) and duly recognized by the Secretary of the Interior,

Petitioner,

v.

SECRETARY OF THE UNITED STATES DEPARTMENT OF THE INTERIOR, DONALD P. HODEL, *et al.*

Respondents.

REPLY TO BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED IN REPLY

Whether the Court should grant the Writ of Certiorari as prayed for, where, as here, Petitioner White Mountain Apache Tribe has presented for determination critical, unresolved issues respecting federal, state, and tribal jurisdiction as modified by the McCarran Amendment, 43 U.S.C. 666, Respondents having failed in their brief to mention, much less to answer, the issues presented by Petitioner Tribe?

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REPLY TO BRIEF FOR THE RESPONDENTS IN OPPOSITION

FAILURE OF RESPONDENTS TO CONSIDER THE ISSUES PRESENTED BY PETITIONER

Failure of Respondents to mention much less to challenge in their brief in opposition the critical jurisdictional questions presented here by Petitioner White Mountain Apache Tribe is a disservice to the Court, Petitioner Tribe, and other Indian Tribes similarly situated. Respondents, by ignoring the prime jurisdictional issue presented by Petitioner Tribe, leave unanswered this question:

Did Congress, when it adopted the McCarran Amendment, 43 U.S.C. 666,[1] a most constrictive waiver of the sovereign immunity of the National Government and Petitioner

[1] Petition for a Writ of Certiorari . . . p. 3, 43 U.S.C. 666, "Suits for adjudication of water rights—Joinder of United States as defendant."

Tribe from suits in state courts, "... for the adjudication of rights to the use of water of a river system or other source ....":

(1) Deprive the District Courts of the United States of jurisdiction to hear and to determine Petitioner Tribe's "private suit" tortious in character charging fraudulent conduct by Respondents, primarily the Secretary of the Interior and subordinates, acting in their individual, not official capacity, in mismanaging Petitioner Tribe's Fort Apache Indian Reservation including Petitioner Tribe's reserved Salt River rights and

(2) Subject Petitioner Tribe to the jurisdiction of the Arizona State Court Water Rights W-1 Proceedings to resolve Petitioner Tribe's charges of fraudulent conduct against the Respondents as individuals for the fraudulent mismanagement of Petitioner Tribe's Reservation, including its reserved Salt River rights?

PETITIONER TRIBE'S REPEATED EFFORTS TO BE HEARD RESPECTING ITS FRAUD CHARGES NOT A McCARRAN AMENDMENT PROCEEDINGS

Dissimulation by Respondents Must Not Be Permitted To Mask Issues Actually Presented

Artfully, Respondents, by their "Question Presented," "Statement," and "Argument," seek to represent Petitioner Tribe's fraud charges against the individual Respondents as routine issues to be heard and determined in the State Court W-1 Proceedings. To that end, Respondents attempt to convert Petitioner Tribe's "private suit" against Respondents as individuals to be a part of a *sui generis* action, public in character, to adjudicate rights to the use of water within the purview of the McCarran Amendment, 43 U.S.C. 666. Moreover, and contrary to facts, Respondents would cast Petitioner Tribe in the role of a recalcitrant trust beneficiary, interfering with the alleged good-faith efforts of Respondents as agents of a prudent trustee to prepare Petitioner Tribe's claim to its reserved Salt River rights and to appear in State court on behalf of Petitioner for the purpose of protecting Petitioner Tribe's reserved Salt River rights.

Alternatively, Respondents urge that, if Petitioner Tribe desires to reject the "good faith" endeavors of Respondents to prepare and to present Petitioner Tribe's claims in the State Court W-1 Proceedings, Petitioner Tribe on its own behalf could prepare a claim, intervene in the State Court W-1 Proceedings, and there have adjudicated the issues of the fraud practiced upon Petitioner Tribe by Respondents in the mismanagement of Petitioner Tribe's Salt River rights. In substance, Respondents dissemble in seeking to present to the Court the proposition that Petitioner Tribe could conduct an adversarial proceedings against Respondents respecting Respondents' fraudulent conduct in the State Court W-1 Proceedings. Respondents fail to contest Petitioner Tribe's documented assertions that the McCarran Amendment was never intended by Congress and could not be a vehicle for subjecting to the State Court W-1 Proceedings the ongoing controversy between Petitioner Tribe and Respondents.

Introduction by Respondents of Issues in Smith-Watt Case Require Reply [2]

Petitioner White Mountain Apache Tribe is forced to reply to Respondents' extended references to the initial action taken by Petitioner Tribe to protect itself against the fraudulent mismanagement of its Salt River reserved rights by Respondents. Markedly the facts in *Smith-Watt* are reviewed and documented in the petition for certiorari filed in this case [3] and need not be restated. As summarized in Tribe's petition, the Salt River and tributaries of that stream arise within Petitioner Tribe's Fort Apache Indian Reservation. Petitioner Tribe's charges that successive Secretaries of the Interior have illegally and fraudulently mismanaged its Salt River reserved rights, its grazing lands, and its forest lands, not primarily for the benefit of Petitioner Tribe, but for the purpose of supplying Salt River water to the Secretarial Federal Reclamation Project.[4]

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[2] *White Mountain Apache Tribe v. William French Smith, Attorney General and James G. Watt, Secretary of the Interior, et al.*, Civ. No. 81-1205.

[3] Pet. for Cert., p. 3, *et seq.*

[4] *Ibid.*, at p. 5.

What Respondents did not state but should have in regard to *Smith-Watt* is this: Petitioner Tribe asserted to the District Court and to the Court of Appeals for the District of Columbia that the Secretary of the Interior, represented by the Attorney General, fraudulently claims virtually *all* of the Salt River water, to the exclusion of Petitioner Tribe, for the benefit of non-Indian Salt River water users. Geographical location of the Upper Salt River Valley within the Fort Apache Indian Reservation and the service area of the Salt River Federal Reclamation Project are graphically displayed in the Appendix to Tribe's petition for certiorari.[5]

In *Smith-Watt* it was, moreover, contended by Petitioner Tribe that the Attorney General in 1910 had obtained the entry of the *Kent Decree* in the case of *Hurley v. Abbott, United States of America, Intervenor,* in the then Territorial Court which purported to award *all* of the Salt River water to the Secretarial Salt River Project.[6]

The Secretary of the Interior and the Attorney General ignored Petitioner Tribe's protests and advised the Tribe that the fraudulent claim would be filed in the State Court W-1 Proceedings. Thereafter, Petitioner Tribe initiated on May 21, 1981, in the United States District Court for the District of Columbia, its action against the then Attorney General Smith and the then Secretary of the Interior Watt, as individuals.

In denying subject matter jurisdiction, the District Court declared that the Attorney General's "litigating judgment" was not subject to judicial review.[7] On May 16, 1982, the Court of Appeals for the District of Columbia upheld the dismissal respecting the Attorney General's "litigating judgment" declaring, nevertheless, in regard to the Secretary of the Interior, a co-defendant, that its decision:

> . . . intimates no views about federal jurisdiction under 28 U.S.C. Sec. 1362 (1976) or otherwise, over a

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[5] App. E, Pet. for Cert., Location Map, p. 4e, Fort Apache Indian reservation; p. 3e, Service Area, Salt River Federal Reclamation Project, *Kent Decree* Area.

[6] *Ibid.*, at p. 3e.

[7] See Appendix A of this Reply, Order dated June 22, 1981, *White Mountain Apache Tribe v. William French Smith, et al.*

> suit by this or any other tribe, challenging other actions by the Secretary of the Interior with respect to the exercise of his trust responsibilities. Nor do we express any views about the merits of the litigation now pending in the state and federal courts in Arizona.[8]

On June 22, 1982, Petitioner Tribe filed its petition for a writ of certiorari in the *Smith-Watt* case. Pending before the Court at the time of the filing of the last mentioned petition were cases concerning which the McCarran Amendment, 43 U.S.C. 666, was directly or inferentially involved. Nevertheless, as stressed throughout this reply, the McCarran Amendment is constricted to "general adjudication" proceedings and not to "private suits" of the character of the *Smith-Watt* case, or the case giving rise to this petition.

San Carlos, Adsit, and Nevada Pending Disposition when Smith-Watt Petition for Certiorari Was Filed

When the *Smith-Watt* petition was filed there were awaiting decisions in this Court the following cases: *San Carlos Apache Tribe v. Arizona,*[9] *Northern Cheyenne Tribe v. Adsit,*[10] and *Nevada v. United States.*[11] Cognizant that decisions in those cases could impact the disposition of the petition in *Smith-Watt,* Petitioner Tribe, though not a party to either *San Carlos* or *Adsit,* was granted leave to file its motion on June 3, 1983,[12] during the pendency of Tribe's petition for certiorari in the *Smith-Watt* case. There Petitioner Tribe stressed to the Court that the critical "threshold issues" of jurisdiction and adequacy had not been raised in either *San Carlos* or *Adsit* but should be raised and determined antecedent to the disposition of those cases.

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[8] Appendix B, unpublished, Judgment and Memorandum Opinion; only affirmance noted in 675 F.2d 1341 (C.A.D.C. 1982).

[9] 668 F.2d 1093 (CA 9, 1982).

[10] 668 F.2d 1080 (CA 9, 1982).

[11] 649 F.2d, 1286 (CA 9, 1981), 666 F.2d 351 (CA 9, 1982).

[12] June 3, 1983, Nos. 81-2147, 81-2188, Motion of White Mountain Apache Tribe to Dismiss for Lack of Subject Matter Jurisdiction in this Court, p. 4.

The Court directed the Solicitor General to respond to Petitioner Tribe's motion raising the threshold questions. That official, after acknowledging the pendency of Tribe's petition for certiorari in *Smith-Watt,* said this:

> . . . we agree with Movants [Petitioner Tribe] that this Court ought not approve the dismissal of the federal court action unless it first concludes that the Indian water rights can be adjudicated in the pending State court proceedings in Arizona and Montana.[13]

Continuing, moreover, the Solicitor General acknowledged that:

> . . . although the sufficiency of the State court proceedings has been challenged by some of the parties . . . it is right to say that the question has not been fully briefed in this Court and that the opinions below offer little assistance on the issue. Of course, '[i]f there is any substantial doubt' as to whether 'the parallel State-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties,' 'it would be a serious abuse of discretion' for the federal court to dismiss the case filed there.[14]

Thereafter on July 1, 1983, the Court rendered its *Arizona v. San Carlos; Montana v. Northern Cheyenne Tribe-Adsit* decision stating that:

> In the cases before us, assuming that the state adjudications are adequate to quantify the rights at issue in the federal suits, . . . we must conclude that the District Courts were correct in deferring to the state proceedings.[15]

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[13] June 14, 1983, Response of the United States to Motion for Leave to File and Motion To Dismiss for Lack of Jurisdiction, p. 2.

[14] *Ibid.,* at pp. 4-5.

[15] *Arizona v. San Carlos Apache Tribe,* 463 U.S. 545, 570 (1983).

And adding, by way of footnote, this further qualification to that statement:

> In a number of these cases, respondents have raised challenges, not yet addressed either by the Court of Appeals or in this opinion, to the jurisdiction or adequacy of the particular state proceeding at issue to adjudicate some or all of the rights asserted in the federal suit. These challenges remain open for consideration on remand.[16]

Shortly thereafter, on July 6, 1983, more than a year after the Tribe filed its petition for a writ of certiorari in *Smith-Watt,* the Court entered its order denying that petition.[17]

It is relevant, in light of this Petition, that immediately prior to the July 1, 1983 *San Carlos* opinion, the Court rendered its opinion in *Nevada,* declaring, among other things, that the Secretary of the Interior would not be required to adhere to the strict standards of a private Trustee.[18]

Nevada Not Applicable Here

Reliance upon *Nevada* by Respondents is misplaced.[19] In *Nevada* the issue of fraud in the preparation of that Tribe's reserved rights there involved had not been raised antecedent to the initiation of the case giving rise to that decision. Indeed, the Department of Justice itself sought to modify the decree that had been entered. Not so here. Petitioner Tribe acted promptly, insisting that it is grossly improper for the Attorney General to force his representation on Petitioner Tribe in the State Court W-1 Proceedings, having previously appeared on behalf of the Secretary of the Interior and having joined in the entry of the Kent Decree, which explicitly allocates all of the Salt River waters to the non-Indian Salt River water users to the exclusion of the claims of Petitioner Tribe, underscoring the fraud practiced upon Petitioner Tribe. It would be manifestly

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[16] *Ibid.,* p. 570, ftn. 20.

[17] No. 81-2334, *White Mountain Apache Tribe v. Smith, Attorney General, et al., cert. den.* 463 U.S. 1228 (1983).

[18] *Nevada v. United States,* 463 U.S. 110, 128 (1983).

[19] Brief for Respondents, pp. 7, 9, 10.

unjust and totally improper to force the Tribe into the State Court W-1 Proceedings, which fully recognizes the Kent Decree, thus consummating the fraud practiced on Petition Tribe antecedent to resolution of the conflict between Petitioner Tribe and the Secretary of the Interior in the *Hodel* case, to which this petition pertains.

Case Against Respondent Hodel and Others

On October 20, 1983, Petitioner Tribe filed its complaint in the United States District Court for the District of Arizona in the case of *White Mountain Apache Tribe v. James G. Watt, Secretary* [now Donald P. Hodel], *et al.*, Civ. No. 83-2045 PCT CAM, referred to here as the *Hodel* case.[20]

The *Hodel* case was patterned after the Memorandum Opinion of the Court of Appeals for the District of Columbia in the *Smith-Watt* case,[21] alleging, among other things, that the Secretary of the Interior, in clear violation of the official's trust obligation owing to Petitioner Tribe, had intentionally violated Petitioner Tribe's Salt River reserved rights for the benefit of the Salt River Federal Reclamation Project and that the State Court W-1 Proceedings was totally inadequate. In *Hodel,* moreover, Petitioner Tribe documents its contention that the State Court W-1 Proceeding is wholly without jurisdiction to hear and adjudicate the controversy between Petitioner Tribe and the Secretary of the Interior, who, together with other Respondents, is violating Petitioner Tribe's Salt River rights through his fraudulent conduct.[22]

Subsequent to the filing of Petitioner Tribe's complaint in the *Hodel* case, the Court of Appeals for the Ninth Circuit, on December 9, 1983, rendered its opinion on remand from this Court's *San Carlos Apache* decision. The Ninth Circuit declared that the issues of jurisdiction and adequacy of the State court proceedings must be resolved in the State courts, explicitly emphasizing, moreover—it is believed in plain and serious

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[20] Pet. for Cert., p. 3, *et seq.*

[21] *See,* Appendix B to this Reply.

[22] Pet. for Cert., p. 10, *et seq.*

error—that neither the issue of jurisdiction nor adequacy of the State Court W-1 Proceedings will be considered:

> . . . *prior to conclusion of the state court proceedings,* and we instruct the district courts to do the same.[23]

Applying what is perceived to be the rationale of this Court's *San Carlos* opinion—as interpreted by the Court of Appeals of the Ninth Circuit—the District Court dismissed Petitioner Tribe's *Hodel* complaint, declaring in effect, that Petitioner Tribe would not be heard respecting its fraud claims for at least a half century due to the magnitude and protracted character of the State Court W-1 Proceedings, and justifying that dismissal as being:

> Pursuant to the mandate set forth in *Northern Cheyenne, supra,* as well as the decision in *Arizona v. San Carlos Apache Tribe of Arizona, supra,* this Court will dismiss Plaintiff's Complaint *as to its allegations of lack of jurisdiction in the state court to make determinations concerning federal water rights.*[24]

Petitioner Tribe moved for reconsideration of the order of dismissal and the District Court modified that order, granting its "Rule 54(b) Judgment" in which it declared:

> All claims raised in the complaint except plaintiff's mismanagement claim are dismissed with prejudice.[25]

The District Court further declared that the mismanagement claim is dismissed without prejudice, granting Petitioner Tribe leave to file an Amended Complaint within a specified time. Pursuant to the District Court's order, Petitioner Tribe was forced to sever from its complaint in *Hodel* its Salt River reserved rights concerning which it had specifically claimed fraudulent mismanagement by successive Secretaries of the Interior and the other Respondents. Recently the District Court

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[23] *Northern Cheyenne Tribe v. Adsit; San Carlos, Apache v. Arizona,* 721 F.2d 1187, 1188 (CA 9, 1983). (Emphasis supplied).

[24] App. A, Pet. for Cert. pp. 10a-11a. (Emphasis supplied)

[25] App. B, Pet. for Cert., pp. 1b-2b.

required Petitioner Tribe to exhaust its administrative remedies prior to invoking the District Court's jurisdiction. That ruling is irrelevant to this petition.

Deceptive Tactics of Respondents Must Not Be Permitted To Prevail

By avoiding reference in their brief to the issues presented in Tribe's petition for certiorari and by representing that the State Court W-1 Proceedings is adequate to resolve all issues involved, Respondents seek by protracted delay to avoid responsibility for their wrongdoing. Respondents are fully aware that in the extended period between the present and when the final judgment in the State Court W-1 Proceedings is entered involves at least a half century.[26] In that period of time, Respondents are assured that Petitioner Tribe's claims will be abandoned. They seek, moreover, by presenting discursive issues in their brief, to blur the pressing need to have the fraud issue resolved at this time. An example of a meaningless issue is this ploy set forth by Respondents in their brief:

> Petitioner also suggests (Pet. 21-23) that the judgment below has somehow abridged its sovereign immunity to suit. Because this action was brought by petitioner itself, petitioner's contention apparently is that the adjudication of its water rights in state court in W-1 would be inconsistent with its principles of sovereign immunity.[27]

Respondents are fully aware that Petitioner Tribe has invoked its sovereign immunity from suit as a complete barrier to Respondents' efforts to have the fraud issue tried in a state court which lacks jurisdiction to try those issues against Respondents.[28] Respondents, moreover, know, or most assuredly should know, that neither *Nevada, San Carlos,* nor the Ninth Circuit's interpretation of those decisions pertains to actions of the character initiated by Petitioner Tribe to expose and to

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[26] *See,* Pet. for Cert., p. 13, W-1 In Its Infancy.

[27] Respondents' Brief, p. 10.

[28] Pet., p. 22, citing *Santa Clara Pueblo;* Tribe's immunity from suit not to be waived by implication.

restrain Respondents in their course of fraudulent conduct. It is crude sophistry for Respondents to assert—absent a resolution of the fraud charges—that:

> . . . it is now unmistakably clear that the Superior Court . . . in Arizona has jurisdiction in W-1

and that Respondents must present claims for Petitioner Tribe

> . . . or risk forfeiting all rights for the Reservation.[29]

That spurious contention continues the attempt to evade the critical issue of whether Petitioner Tribe can legally be forced to have its rights and interests subverted to the W-1 Proceedings by Respondents when Petitioner Tribe is prepared to prove in *Hodel* that Respondents are and have been practicing fraud upon Petitioner Tribe. Tribe asserts in *Hodel* that those charges should be heard in a federal forum that has jurisdiction and not the State Court W-1 Proceedings that could not hear and adjudicate Petitioner Tribe's charges.

Understandably, Respondents embrace totally the misconceptions of the court below [30] which in plain and serious error declares:

> We likewise reject the Tribe's contention that, because the water rights claim filed by the government on the Tribe's behalf is 'fraudulent,' the employees covered by the Tribal Court injunctions were not acting within the scope of their duties as federal officers.[31]

Respondents consistently fail to mention the explicit language of Petitioner Tribe's *Hodel* complain in which fraud is explicitly charged, which is not within the purview of the McCarran Amendment, and consistently adopt and repeat the

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[29] Respondents' Brief, p. 11.

[30] *Ibid.*

[31] Pet., p. 22, quoting from Petitioner's companion case not here for review.

mistaken concepts of the court below, which in error declares, irrespective of the fraud charges, that:

> The state court *does* have the authority to adjudicate tribal water rights in W-1 . . . .[32]

Likewise adopted in error by Respondents in support of their concepts is their paraphrasing of the misconception by the court below of Petitioner Tribe's *Hodel* case, which is in part as follows:

> [Petitioner Tribe sought in the *Hodel* case] (iii) a declaration that the Arizona courts lack jurisdiction in W-1 to determine reserved water rights held in trust for petitioner; . . . .[33]

> and state further that Petitioner Tribe seeks to enjoin ". . . the United States in its capacity as trustee with respect to those rights."[34]

> Petitioner Tribe has *never* asserted here or elsewhere that the United States as trustee, acting through authorized agents, could not properly represent Petitioner Tribe in a proper proceeding in a court having adequate jurisdiction. Both the court below and Respondents, while seeking to ignore Petitioner Tribe's charges of Secretarial fraud, have failed to refer to any authority—there is none—that denies Petitioner Tribe the right to be heard in a federal court respecting those charges and in contemplation of its own sovereignty.

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[32] App. C. to Pet. for Cert., p. 6c.

[33] Respondents' Brief, p. 5; App. C, Pet. for Cert., p. 5c.

[34] *Ibid.*

CONCLUSION

Petitioner Tribe respectfully prays the Court to grant a writ of certiorari allowing Petitioner Tribe fully to be heard respecting the facts of this case which on review are admitted. Petitioner Tribe's charges of fraud should be resolved as a condition to any attempt to subvert Petitioner Tribe or its invaluable Salt River reserved rights to the State Court W-1 Proceedings.

The ancient maximum that justice delayed is justice denied is most appropos under the circumstances here.

Respectfully submitted,

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White Mountain Apache Tribe

Dated December , 1986.

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 81-1205

THE WHITE MOUNTAIN APACHE TRIBE,
Plaintiffs,

v.

WILLIAM FRENCH SMITH, *et al.*,
Defendants.

[Filed Jun. 23, 1981]

ORDER

Having considered the motion of the United States to dismiss this action to enjoin the appearance of the Attorney General in proceedings pending in Maricopa County Superior Court, Arizona, and the memoranda and auxiliary documents filed by the parties in support of and in opposition to the motion, the Court concludes that neither 5 U.S.C. § 701, *et seq.*, 28 U.S.C. 1362, nor 28 U.S.C. §§ 2201-2202, nor any other statute gives this Court jurisdiction over the Attorney General's exercise of litigating judgment. In addition, plaintiff has an adequate remedy at law in the state court proceeding subject, as it is, to potential appellate review in the United States Supreme Court. Accoridngly, it is hereby

ORDERED: That the complaint filed herein by the White Mountain Apache Tribe is dismissed.

/s/ Louis F. Oberdorfer
United States District Judge

Date: June 22, 1981

APPENDIX B

Not to be Published—See Local Rule 8(f)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1981

Civil Action No. 81-01205

No. 81-1944

WHITE MOUNTAIN APACHE TRIBE,
Appellant

v.

WILLIAM FRENCH SMITH, *et al.*,

[Filed Mar. 16, 1982]

Appeal from the United States District Court
for the District of Columbia

Before: WALD, MIKVA and EDWARDS,
Circuit Judges

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration of the foregoing, it is.

ORDERED AND ADJUDGED, by this Court, that the judgment of the District Court appealed from herein is affirmed for the reasons set forth in the attached memorandum.

Per Curiam
For the Court

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

MEMORANDUM

The White Mountain Apache Tribe brought suit in the United States District Court for the District of Columbia, to enjoin the Attorney General and the Secretary of the Interior from participating in litigation in Arizona state court, No. W-1, that seeks an adjudication of water rights in the Salt River basin.[1] As bases for jurisdiction, the Tribe alleged the Administrative Procedure Act, 5 U.S.C. § 702 (1976); the Declaratory Judgments Act, 28 U.S.C. §§ 2201-02 (1976 & Supp. III 1979); and the statute extending general federal question jurisdiction to Indian tribes, 28 U.S.C. § 1362 (1976). The District Court dismissed the suit for lack of subject matter jurisdiction, reasoning that neither these nor any other statute conferred subject matter jurisdiction over an effort to enjoin the Attorney General's exercise of litigating judgment. We agree with the District Court insofar as it held that it lacked subject matter jurisdiction over this attempt by the Attorney General to exercise his litigating discretion.

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[1] The present posture of the Arizona litigation is complex. In *In Re the General Adjudication of the Rights to Use Water in the Salt River Watershed Above Granite Reef Dam, Excluding the Verde River Tributary,* No. W-1, what is sought is a puported general adjudication of the rights to use water in a portion of the Salt River watershed. The United States, while preserving its rights to appear in No. W-1 to assert claims for water rights held in trust for Indian tribes, has moved to dismiss No. W-1 for lack of jurisdiction under the McCarran Amendment waiver of sovereign immunity in general water rights adjudications, 43 U.S.C. § 666 (1976). Additionally, the federal District Court for the District of Arizona dismissed an effort by a number of Indian tribes with interest in the Salt River to remove the litigation to federal court, in favor of the state court proceeding. *In re Determination of Conflicting Rights to the Use of Water from the Salt River Above Granite Reef Dam,* 484 F. Supp. 778 (D. Ariz. 1980). The Ninth Circuit has recently reversed and remanded to the District Court for a determination of whether Arizona has repealed a disclaimer of jurisdiction over Indian lands, which disclaimer would bar the Arizona courts from asserting jurisdiction over the Indian water rights at issue in No. W-1. *San Carlos Apache Tribe v. Arizona,* No. 80-5137 (9th Cir. Feb. 23, 1982). *See Northern Cheyenne Tribe v. Adsit,* No. 79-4887 (9th Cir. Feb. 22, 1982) (McCarran Amendment does not implicitly repeal state disclaimers to the exercise of jurisdiction over Indian lands).

We note that the complaint alleges generally, and the Tribe argues vigorously, that the Secretary of the Interior has violated his trust responsibilities towards them. The specific violation complained of here, however, is the Attorney General's decision on behalf of the Secretary to participate in the Arizona litigation. So the trial judge read the complaint, and it is on this basis that we affirm. Our decision intimates no views about federal jurisdiction under 28 U.S.C. § 1362 (1976) or otherwise, over a suit by this or any other tribe, challenging other actions by the Secretary of the Interior with respect to the exercise of his trust responsibilities. Nor do we express any views about the merits of the litigation now pending in the state and federal courts in Arizona.